

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comments on Consolidated Appeals by)	CC Docket No. 02-6
Connect2 Internet Network, Inc)	
)	
Schools and Libraries Universal Service)	
Support Mechanism)	

Comments of Greg Weisiger

The Wireline Competition Bureau (WCB) seeks comment on a number of appeals filed by Connect2 Internet Network, Inc. (Connect2), consolidated by the WCB in a single appeal for this comment request. The WCB seeks comment on several issues, including whether fines assessed under previous criminal settlement with the Department of Justice (DOJ) precludes the Universal Service Administrative Company (USAC) from recovering funds; Connect2 claims it never received the OIG audit report and did not have an opportunity to rebut findings; the amount of money USAC seeks is inconsistent with the OIG audit findings; and recovery amounts are de minimus and thus should not be recovered. Additionally, Connect2 alleges it never received a copy of the Commitment Adjustment Letter and had no opportunity to appeal the commitment adjustment decision within the 60 day appeal window. Connect2 therefore maintains it should be granted a waiver of Commission appeal deadline regulations and have the above issues considered for decision.

Connect2 and its Place in E-Rate History

Connect2 and its corporate officers have been found guilty of defrauding the Universal Service discount mechanism for schools and libraries. Connect2 was guilty of billing for services it never provided, it was guilty of conspiracy in attempting to cover-up its fraud, and it may or may not have overcharged customers and the program for services rendered. Connect2 and others of its ilk have tarnished the E-Rate program to a point where the program itself is in jeopardy. Honest applicants must now face intense scrutiny for the simplest, most fundamental types of discount requests because of the hundreds of millions of dollars Connect2 and others have defrauded, attempted to defraud or waste from the program.

I absolutely do not condone the behavior of Connect2. It is unfortunate the Commission has used this appeal to seek comment on relevant and important issues affecting the thousands of honest vendors and applicants receiving much needed benefits authorized under the Telecommunications Act of 1996.

Should Criminal Fines Constitute Universal Service Fund Recovery

On the question of whether the criminal fines should constitute the full recovery of funds, the WCB must analyze the nature of Universal Service funding verses fines for criminal convictions. First, Universal Service funds are considered non-appropriated federal funds by the U.S. Department of Education.¹ These funds have been counted as revenue funds when calculating federal budget receipts since 1999; however, they have been exempt from congressional appropriation and have been exclusively administered by USAC – the not-for-profit company established under Commission Order. Universal

¹ See Annual Funding Report by the National Center for Educational Statistics 2004

Service funds are derived from “contributions” required of interstate telecommunications carrier revenue. All USAC operations are funded from Universal Service contributions. Contributions to the Schools and Libraries portion of Universal Service are set at \$2.25 Billion per year. Administration functions related to the Schools and Libraries program are deducted from the contribution pool or accumulated interest from the vast sums of money sitting in accounts awaiting disbursement to deserving schools or libraries. The balance of the money is disbursed to service providers representing discounts to eligible schools and libraries authorized by USAC - the Administrator of the fund.

The fund itself is a zero sum game. All funding authorized is either disbursed or kept in the fund for carryover to future years. Funding disbursed by USAC in error must be recovered.² Funds may be recovered from service providers or from applicants, depending on who was responsible for receiving improperly disbursed funds. When recovering funds, USAC requests recovery targets (vendors or applicants) to submit payment to USAC, not the federal government.³ As such, funding disbursed in error returns to the fund account for future commitments.

When convicted of a criminal offense, individuals or companies may be levied fines by the courts for actual damages and/or punitive amounts. Criminal fines for federal convictions are typically remitted to the federal treasury. As previously noted, Universal Service funds are not and never have been derived from federal sources. If Connect2 paid fines as a result of federal conviction to the U.S. Treasury representing improperly

² Commitment Adjustment Order, CC 96-45, 1999; Fourth Order on Reconsideration CC Docket No. 02-6, 2004.

³ USAC Repayment Demand Letter requests recovery checks to be mailed to Universal Service Administrative Company, 1259 Paysphere Circle, Chicago, IL, 60674

disbursed Universal Service funding, it might be reasonable for Connect2 to conclude that it had satisfied its obligation to both the government and USAC. If all parties understood that fines levied by the courts represented improperly disbursed funding, the federal government should reimburse the Schools and Libraries Fund. As a matter of criminal law, I doubt such agreement was made and the fines represented criminal forfeiture of wrongfully gained wealth. As such, Connect2 must repay the Fund the amount to maintain the zero sum status of the Fund.

The Commission as Debt Collector of Last Resort

If it is accepted that the Universal Service fund is a zero sum game, and funds cannot be created or destroyed when accounting contributions and disbursements, then all funds disbursed in error must be returned to the Fund when collected. Normally, USAC will invoice applicants or vendors who have improperly received funding. If USAC is unable to collect from the applicant or vendor and in its role to serve at the pleasure and order of the Federal Communication Commission, the Commission is the debt collector of last resort.⁴ Guilty pleas by NEC for E-Rate fraud and consent decrees between the Commission and various service providers representing improperly disbursed funding should logically be returned to the Fund rather than to the federal treasury. The NEC case is similar to Connect2 and USAC may seek recovery from NEC or applicants to recover defrauded funds on behalf of the Fund. In consent decree cases, the Commission must establish a mechanism to transfer such funds from the Commission or treasury as

⁴ According to USAC Demand Payment Letter “If we do not receive full payment of the outstanding debt within 30 days of the date of this letter (Demand Date), pursuant to the DCIA, you may incur additional charges and costs, and the debt may be transferred to the Federal Communications Commission...or the United States Department of Treasury...for debt collection.

applicable to the Universal Service Fund. Finally, as Debt-Collector-of –Last-Resort, the Commission must establish a mechanism to channel funds received back to the Fund. Further, because the Fund must be made whole, the Commission may not withhold collected funds for expenses related to debt collection or overhead.

Connect2 Argues a Waiver of Appeal Deadline Because it Never Received a Funding Commitment Adjustment Letter

This will not be the first waiver appeal from a party contending that it did not receive a Commitment Adjustment (COMAD) letter. Without absolute proof of receipt by Connect2 of COMAD letters, the Commission must conclude USAC did not properly serve Connect2 with the letter. I have argued on many occasions that USAC lacks adequate quality control practices or adequate training of employees.⁵ When seeking fund recovery, it is critically important that the target of fund recovery is properly served with notice of rule violation and intent of fund recovery. Connect2 argues it never received a copy of the Office of Inspector General audit report that initiated the COMAD. Similarly, in an appeal of a recent COMAD letter for Ysleta Independent School District, IBM argues that it too did not receive the OIG audit report. Unlike the Connect2 appeal here, apparently, IBM did receive a COMAD letter.

Aside from my reply comments in the USAC Audit Resolution Plan or other comments, I have additional evidence that USAC has in the past and continues to improperly and incorrectly serve notice to vendors and applicants. Rather than detail new revelations of USAC shortcomings for the benefit of Connect2, I will reserve those for

⁵ Weisiger Reply Comments on USAC Audit Resolution Plan, January 14, 2005; Third Order Comments, March 8, 2004; Comments to Waste, Fraud, and Abuse Forum May 8, 2003; others.

other applicants or vendors more worthy of waiver consideration. Based on arguments as presented and the documented track record of USAC, waiver of the appeal deadline is warranted and the WCB should consider the Connect2 appeal as presented.

Commitment Adjustment Letters Should be Served Under Apparent Liability Rules

A funding commitment adjustment is by definition an adjustment to previously committed funding. In the vast majority of cases, a commitment is adjusted AFTER funds have been disbursed to either the vendor or the applicant. If funds had been disbursed, presumably work had been performed and invoices satisfied. A commitment adjustment in this case would represent a demand for money, or fine, by the Commission (USAC as an agent of the Commission). In contrast, a commitment adjustment made coincident with the issuance of a Commitment Letter or complete denial of funding would represent a failure to fund potential work. Applicants and vendors are cautioned not to commence projects until a Funding Commitment Letter is secured. Once a Commitment Letter has been issued and work performed, the demand for improperly disbursed funds is equal to a “fine” or Notice of Apparent Liability in Commission jargon.

According to Part 47, Title 1, Section 1.80 of Commission rules, notice of apparent liability shall be served by the Commission or Commission designee as follows:

(f) *Notice of apparent liability.* Before imposing a forfeiture penalty under the provisions of this paragraph, the Commission or its designee will issue a written notice of apparent liability.

(1) *Content of notice.* The notice of apparent liability will:

(i) Identify each specific provision, term, or condition of any act, rule, regulation, order, treaty, convention, or other agreement, license, permit, certificate, or

instrument of authorization which the respondent has apparently violated or with which he has failed to comply,

(ii) Set forth the nature of the act or omission charged against the respondent and the facts upon which such charge is based,

(iii) State the date(s) on which such conduct occurred, and

(iv) Specify the amount of the apparent forfeiture penalty.

(2) *Delivery.* The notice of apparent liability will be sent to the respondent, by certified mail, at his last known address (see §1.5). (emphasis added)

The Commission should require USAC to deliver Commitment Adjustment letters by certified mail and maintain a record of proper delivery. This will provide greater accountability and certainty that targets of Commitment Adjustments are properly and timely served notice of indebtedness. It is wholly unacceptable to rely on questionable USAC address records and assertions by USAC that Commitment Adjustment Letters were properly mailed.

Respectfully submitted this Seventh day of February, 2005,

Greg Weisiger

14504 Bent Creek Court

Midlothian, VA 23112

(804) 692-0335